

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

VOCALSPACE, LLC

Plaintiff,

v.

DANIEL D. LORENZO and  
LARKSPARK CORPORATION,

Defendants.

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Civil Action No. 4:09-CV-00350

**ORDER ON DEFENDANTS MOTION IN LIMINE**

After considering Defendants motion in limine and the response, the court ORDERS Plaintiff, VocalSpace, LLC, counsel for Plaintiff, and all witnesses called on behalf of Plaintiff to refrain from any mention or interrogation, directly or indirectly, including offering documentary evidence, about any of the following matters without first requesting and obtaining a ruling from the court, outside the presence and hearing of all prospective jurors and jurors ultimately selected in this case, on the admissibility of the matter:

1. Any evidence, statement, or argument of other crimes, wrongs, or acts to prove the character of defendant Daniel Lorenzo to show that defendant Lorenzo acted in conformity with his character on any occasion. *See* Fed. R. Evid. 404(b).

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AGREED

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GRANTED

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DENIED

2. Any evidence, statement, or argument about settlement negotiations. Evidence of

settlement negotiations is inadmissible. *See* Fed. R. Evid. 408; *Affiliated Mfrs., Inc. v. Aluminum Co. of Am.*, 56 F.3d 521, 526-30 (3d Cir. 1995).

AGREED

GRANTED

DENIED

3. Any evidence, statement, or argument that witness, Daniel Lorenzo, was convicted of any crime. The probative value of admitting evidence of this conviction does not outweigh its prejudicial effect. *See* Fed. R. Evid. 609(a)(1); *United States v. Motley*, 940 F.2d 1079, 1083 (7th Cir. 1991).

AGREED

GRANTED

DENIED

4. Any evidence, statement, or argument that witness Daniel Lorenzo was arrested. In Lorenzo's deposition plaintiff repeatedly questioned Lorenzo concerning any prior arrests, which defendant denied ever being arrested. Plaintiff should not be permitted to ask Lorenzo if he has been arrested as just the question would prejudice Defendants.

AGREED

GRANTED

DENIED

5. Any evidence from an expert witness who was not identified as a testifying expert in responses to interrogatories and not designated by the time specified in the pretrial order or local rule. *Coastal Fuels of P.R., Inc. v. Caribbean Petroleum Corp.*, 79 F.3d 182, 202-03 (1st Cir. 1996); *see Alldread v. City of Grenada*, 988 F.2d 1425, 1435-36 (5th Cir. 1993).

AGREED

GRANTED

DENIED

6. Any evidence from an expert witness that is outside the scope of the expert's

written opinion produced during pretrial discovery. *See Thudium v. Allied Prods. Corp.*, 36 F.3d 767, 769-70 (8th Cir. 1994).

AGREED

GRANTED

DENIED

7. Any opinion of an expert that is not supported by admissible facts. *See Guillory v. Domtar Indus. Inc.*, 95 F.3d 1320, 1331 (5th Cir. 1996).

AGREED

GRANTED

DENIED

8. Any evidence, statement, or argument supporting an issue not contained in the final pretrial order. *Life Care Ctrs. of Am., Inc. v. Charles Town Assocs. L.P.*, 79 F.3d 496, 507-08 (6th Cir. 1996).

AGREED

GRANTED

DENIED

9. Any secondary evidence presented because plaintiff did not make a sufficiently diligent search for material requested during discovery. *See Cartier v. Jackson*, 59 F.3d 1046, 1048 (10th Cir. 1995).

AGREED

GRANTED

DENIED

10. Any evidence that plaintiff did not produce in discovery. Plaintiff should not be permitted to present any witness it did not name in its disclosures or answers to interrogatories or any evidence it did not produce in response to any discovery.

AGREED

GRANTED

DENIED

11. Any evidence, statement, or argument suggesting defendants, through their attorney, asserted claims of privilege during discovery. Claims of privilege are not admissible as evidence. *See* Fed. R. Evid. 501.

AGREED

GRANTED

DENIED

12. Any attempt to elicit testimony from defendants about communications with their attorneys. Such communications are privileged. *See* Fed. R. Evid. 501.

AGREED

GRANTED

DENIED

13. Any evidence, statement, or argument that defendant Daniel Lorenzo goes to church every Sunday and tithes or that defendant is an atheist. Evidence of a witness's religious beliefs is not admissible to enhance or impair credibility. *See* Fed. R. Evid. 610.

AGREED

GRANTED

DENIED

14. Any evidence, statement, or argument that defendant Lorenzo received or paid a traffic ticket, or any evidence that plaintiff did not receive a traffic ticket.

AGREED

GRANTED

DENIED

15. Any evidence, statement, or argument of the probable testimony of a witness who is absent, unavailable, not called to testify in this case, or not allowed to testify in this case.

AGREED

GRANTED

DENIED

16. Any attempt to ask defendants attorney to produce documents, to stipulate to any

fact, or to make any agreement in the presence of the jury.

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AGREED

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GRANTED

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DENIED

17. Any statement of the law, other than one about the burden of proof and the basic legal definitions counsel believe to be applicable, before the court rules on the law applicable to this case.

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AGREED

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GRANTED

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DENIED

18. Any evidence, statement, or argument to the jury that the court can reduce the amount of the jury's award.

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AGREED

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GRANTED

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DENIED

19. Any evidence, statement, or argument attempting to impose liability on or arouse prejudice against defendant LarkSpark Corporation simply because it is a corporation.

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AGREED

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GRANTED

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DENIED

20. Any evidence, statement, or argument that Daniel Lorenzo signed any agreement or document with Direct2Prospect. Direct2Prospect is not a party to this lawsuit. Daniel Lorenzo worked for Direct2Prospect prior to working for Plaintiff VocalSpace, LLC and what Lorenzo may have signed with Direct2Prospect is not relevant to the current case with the parties that are present. Any connection that plaintiff will try to make between it and Direct2Prospect is not proper, when in fact Direct2Prospect is a completely separate entity.

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AGREED

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GRANTED

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DENIED

SIGNED on \_\_\_\_\_, 2011

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AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE